

## Union Calendar No. 6

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 665

**[Report No. 104–16]**

To control crime by mandatory victim restitution.

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### IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 1995

Mr. McCOLLUM introduced the following bill; which was referred to the  
Committee on the Judiciary

FEBRUARY 2, 1995

Reported with an amendment, committed to the Committee of the Whole  
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 25, 1995]

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## A BILL

To control crime by mandatory victim restitution.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       *This Act may be cited as the “Victim Restitution Act*  
5       *of 1995”.*

1 **SEC. 2. MANDATORY RESTITUTION AND OTHER PROVI-**  
2 **SIONS.**

3 (a) *ORDER OF RESTITUTION.*—Section 3663 of title  
4 18, United States Code, is amended—

5 (1) in subsection (a)—

6 (A) in paragraph (1)—

7 (i) by striking “may order, in addition  
8 to or, in the case of a misdemeanor, in lieu  
9 of any other penalty authorized by law”  
10 and inserting “shall order”; and

11 (ii) by adding at the end the following:  
12 “The requirement of this paragraph does  
13 not affect the power of the court to impose  
14 any other penalty authorized by law. In the  
15 case of a misdemeanor, the court may im-  
16 pose restitution in lieu of any other penalty  
17 authorized by law.”;

18 (B) by adding at the end the following:

19 “(4) In addition to ordering restitution to the victim  
20 of the offense of which a defendant is convicted, a court may  
21 order restitution to any person who, as shown by a prepon-  
22 derance of evidence, was harmed physically, emotionally,  
23 or pecuniarily, by unlawful conduct of the defendant dur-  
24 ing—

25 “(A) the criminal episode during which the of-  
26 fense occurred; or

1           “(B) the course of a scheme, conspiracy, or pat-  
2       tern of unlawful activity related to the offense.”;

3           (2) in subsection (b)(1)(B) by striking “imprac-  
4       tical” and inserting “impracticable”;

5           (3) in subsection (b)(2) by inserting “emotional  
6       or” after “resulting in”;

7           (4) in subsection (b)—

8               (A) by striking “and” at the end of para-  
9       graph (4);

10            (B) by redesignating paragraph (5) as  
11       paragraph (6); and

12            (C) by inserting after paragraph (4) the fol-  
13       lowing new paragraph:

14            “(5) in any case, reimburse the victim for lost  
15       income and necessary child care, transportation, and  
16       other expenses related to participation in the inves-  
17       tigation or prosecution of the offense or attendance at  
18       proceedings related to the offense; and”;

19            (5) in subsection (c) by striking “If the court de-  
20       cides to order restitution under this section, the” and  
21       inserting “The”;

22            (6) by striking subsections (d), (e), (f), (g), and  
23       (h);

24            (7) by redesignating subsection (i) as subsection  
25       (m); and

1           (8) by inserting after subsection (c) the follow-  
2     ing:

3           “(d)(1) The court shall order restitution to a victim  
4     in the full amount of the victim’s losses as determined by  
5     the court and without consideration of—

6           “(A) the economic circumstances of the offender;  
7     or

8           “(B) the fact that a victim has received or is en-  
9     titled to receive compensation with respect to a loss  
10    from insurance or any other source.

11          “(2) Upon determination of the amount of restitution  
12    owed to each victim, the court shall specify in the restitu-  
13    tion order the manner in which and the schedule according  
14    to which the restitution is to be paid, in consideration of—

15          “(A) the financial resources and other assets of  
16    the offender;

17          “(B) projected earnings and other income of the  
18    offender; and

19          “(C) any financial obligations of the offender,  
20    including obligations to dependents.

21          “(3) A restitution order may direct the offender to  
22    make a single, lump-sum payment, partial payment at  
23    specified intervals, or such in-kind payments as may be  
24    agreeable to the victim and the offender.

1       “(4) An in-kind payment described in paragraph (3)  
2 may be in the form of—

3               “(A) return of property;

4               “(B) replacement of property; or

5               “(C) services rendered to the victim or to a per-  
6 son or organization other than the victim.

7       “(e) When the court finds that more than 1 offender  
8 has contributed to the loss of a victim, the court may make  
9 each offender liable for payment of the full amount of res-  
10 titution or may apportion liability among the offenders to  
11 reflect the level of contribution and economic circumstances  
12 of each offender.

13       “(f) When the court finds that more than 1 victim has  
14 sustained a loss requiring restitution by an offender, the  
15 court shall order full restitution to each victim but may  
16 provide for different payment schedules to reflect the eco-  
17 nomic circumstances of each victim.

18       “(g)(1) If the victim has received or is entitled to re-  
19 ceive compensation with respect to a loss from insurance  
20 or any other source, the court shall order that restitution  
21 be paid to the person who provided or is obligated to provide  
22 the compensation, but the restitution order shall provide  
23 that all restitution to victims required by the order be paid  
24 to the victims before any restitution is paid to such a pro-  
25 vider of compensation.

1       “(2) The issuance of a restitution order shall not affect  
2 the entitlement of a victim to receive compensation with  
3 respect to a loss from insurance or any other source until  
4 the payments actually received by the victim under the res-  
5 titution order fully compensate the victim for the loss, at  
6 which time a person that has provided compensation to the  
7 victim shall be entitled to receive any payments remaining  
8 to be paid under the restitution order.

9       “(3) Any amount paid to a victim under an order of  
10 restitution shall be set off against any amount later recov-  
11 ered as compensatory damages by the victim in—

12               “(A) any Federal civil proceeding; and

13               “(B) any State civil proceeding, to the extent  
14 provided by the law of the State.

15       “(h) A restitution order shall provide that—

16               “(1) all fines, penalties, costs, restitution pay-  
17 ments and other forms of transfers of money or prop-  
18 erty made pursuant to the sentence of the court shall  
19 be made by the offender to an entity designated by the  
20 Director of the Administrative Office of the United  
21 States Courts for accounting and payment by the en-  
22 tity in accordance with this subsection;

23               “(2) the entity designated by the Director of the  
24 Administrative Office of the United States Courts  
25 shall—

1           “(A) log all transfers in a manner that  
2           tracks the offender’s obligations and the current  
3           status in meeting those obligations, unless, after  
4           efforts have been made to enforce the restitution  
5           order and it appears that compliance cannot be  
6           obtained, the court determines that continued  
7           recordkeeping under this subparagraph would  
8           not be useful; and

9           “(B) notify the court and the interested  
10          parties when an offender is 30 days in arrears  
11          in meeting those obligations; and

12          “(3) the offender shall advise the entity des-  
13          ignated by the Director of the Administrative Office  
14          of the United States Courts of any change in the of-  
15          fender’s address during the term of the restitution  
16          order.

17          “(i) A restitution order shall constitute a lien against  
18          all property of the offender and may be recorded in any  
19          Federal or State office for the recording of liens against real  
20          or personal property.

21          “(j) Compliance with the schedule of payment and  
22          other terms of a restitution order shall be a condition of  
23          any probation, parole, or other form of release of an of-  
24          fender. If a defendant fails to comply with a restitution  
25          order, the court may revoke probation or a term of super-

1 *vised release, modify the term or conditions of probation*  
2 *or a term of supervised release, hold the defendant in con-*  
3 *tempt of court, enter a restraining order or injunction,*  
4 *order the sale of property of the defendant, accept a per-*  
5 *formance bond, or take any other action necessary to obtain*  
6 *compliance with the restitution order. In determining what*  
7 *action to take, the court shall consider the defendant's em-*  
8 *ployment status, earning ability, financial resources, the*  
9 *willfulness in failing to comply with the restitution order,*  
10 *and any other circumstances that may have a bearing on*  
11 *the defendant's ability to comply with the restitution order.*

12       “(k) An order of restitution may be enforced—

13               “(1) by the United States—

14                       “(A) in the manner provided for the collec-  
15                       tion and payment of fines in subchapter B of  
16                       chapter 229 of this title; or

17                       “(B) in the same manner as a judgment in  
18                       a civil action; and

19               “(2) by a victim named in the order to receive  
20               the restitution, in the same manner as a judgment in  
21               a civil action.

22       “(l) A victim or the offender may petition the court  
23       at any time to modify a restitution order as appropriate  
24       in view of a change in the economic circumstances of the  
25       offender.”.



1       (b) *PROCEDURE FOR ISSUING ORDER OF RESTITU-*  
2 *TION.—Section 3664 of title 18, United States Code, is*  
3 *amended—*

4           (1) *by striking subsection (a);*

5           (2) *by redesignating subsections (b), (c), (d), and*  
6 *(e) as subsections (a), (b), (c), and (d);*

7           (3) *by amending subsection (a), as redesignated*  
8 *by paragraph (2), to read as follows:*

9       “(a) *The court may order the probation service of the*  
10 *court to obtain information pertaining to the amount of*  
11 *loss sustained by any victim as a result of the offense, the*  
12 *financial resources of the defendant, the financial needs and*  
13 *earning ability of the defendant and the defendant’s depend-*  
14 *ents, and such other factors as the court deems appropriate.*  
15 *The probation service of the court shall include the informa-*  
16 *tion collected in the report of presentence investigation or*  
17 *in a separate report, as the court directs.”; and*

18           (4) *by adding at the end thereof the following*  
19 *new subsection:*

20       “(e) *The court may refer any issue arising in connec-*  
21 *tion with a proposed order of restitution to a magistrate*  
22 *or special master for proposed findings of fact and rec-*  
23 *ommendations as to disposition, subject to a de novo deter-*  
24 *mination of the issue by the court.”.*

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